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"RULE OF REASON" DOCTRINE AS APPLIED TO COMBINATION BETWEEN COMMON CARRIERS ENGAGED IN FOREIGN COMMERCE OPERATIVE IN THIS COUNTRY.

The announcement by Chief Justice White in the Standard Oil and American Tobacco cases of the "Rule of Reason" doctrine was one of the startling things in jurisprudence, which often has challenged attention of the world. It cannot be said it loomed as large as the Dartmouth College or the Munn case, because thoses cases more directly shaped policy than the first alluded to. But the former cases came after years of apparently vain struggle to define clearly what our Sherman Anti-trust Act meant as a statutory declaration of policy. The latter cases were more fundamental—the one of constitutional importance, the other as unfolding common law principles in regard to property devoted to a public use.

Recently the principle in the Munn case is made use of by Justice McKenna, speaking for the entire court in a case where "Rule of Reason" doctrine was invoked to save a combination in restraint of trade under the Sherman Act between common carriers in foreign trade, and it was held not to apply. Thomsen v. Cayser, 37 Sup. Ct. 353.

The scheme between these carriers is defined by the learned justice as follows: "They established a uniform freight rate, including in it what they called a primage charge. This charge was refunded subsequently, but only to shippers who shipped exclusively by the lines of the combining companies, and who had not directly or indirectly made or been interested in any shipment by other vessels. And there was the further condition that the rebate was not payable on the goods of any consignee who directly or indirectly imported goods by vessels other than those of the 'conference'—to use the word employed by the witnesses to describe the combining companies." There are other statements, but this seems enough for our purpose. The suit was for triple damages. A recovery was had in the district court and there was reversal by circuit court of appeals under the "Rule of Reason" doctrine. The supreme court reversed the appeals court and restored the judgment of the district court.

The supreme court, first referring to Nash v. United States, 229 U. S. 373, and Eastern States Retail Lumber Dealers' Asso. v. United States, 234 U. S. 600, as instances of the rule spoken of being applied, then goes on to say: "The rule condemns the combinations of defendants, indeed, must have a stricter application to it than to the combinations passed on in the cited cases. The defendants were common carriers and it was their duty to compete, not combine; and their duty takes from them palliation, subjects them in a special sense to the policy of the law."

Further on, still having the common carrier duty in mind, the court says: "We have already seen that a combination is not excused, because it was induced by good motives or produced good results, and yet such is the justification of defendants. They assert first that they are voluntary agencies of commerce, free to go where they will, not compelled to run from New York to Africa, and that, 'unlike railroads neither law nor any other necessity fixes them upon particular courses,' and therefore, it is asked, 'who can say that otherwise than under the plan adopted, any of the ships of the defendants would have supplied facilities for transportation of commodities between New York and South Africa during the time referred to in the complaint?' The resultant good of the plan it is said, was 'regularity of service with steadiness of rates;' and that 'the whole purpose of the plan under which the defendants acted was to achieve this result.'"

The justice, answers this by speaking of the reasoning as containing conjecture

and supposing that other carriers might have been willing to compete and certain lines were actually competing, "and it is established that the conduct of property embarked in public service is subject to the policies of the law."

Taking this view, the court considers the evidence introduced to show that plaintiffs were actually damaged and holds that the mere fact that they alleged a charge above a reasonable rate and proved it showed the measure of their damage.

Under other cases this conduct would not have exceeded the "Rule of Reason" doctrine as in the Standard Oil and American Tobacco cases and it was not conclusive of the right to recover. The court went further in those cases and said it was necessary to go further to hold there was unlawful combination in the sense of the Sherman Act.

This doctrine was declared as based on the use of common law terms in the anti-trust act, and in such a case as the Thomsen case it is declared practically non-existent when an agency whose property is devoted to public use is not allowed to enter into any arrangement that frees it from the obligation to treat all customers uniformly and without any discrimination whatsoever.

NOTES OF IMPORTANT DECISIONS.

PRINCIPAL AND AGENT — PLACING MONEY FOR GAMBLING IN HANDS OF EMPLOYES AS CREATING AGENCY.—In Kearney v. Webb, 115 N. E. 844, decided by Supreme Court of Illinois, it was held, that, where a raid was made on a gambling house by state officers and the money of proprietors in the possession of employes was taken possession of, the proprietors could recover same from the officers, on the theory that it having been placed in the hands of agents for an unlawful purpose and not used, it could be recalled by the proprietors, as principals, at any time.

The court said: "When plaintiffs in error delivered the three sacks of silver to their said employes, and put them in charge of the room and the gambling tables and other paraphernalia in use for the said business, with directions to conduct or manage the gambling room and the games to be conducted there, the agents did not take title to the money, the room, the tables, or any of the other paraphernalia to be used in connection with the gaming to be there conducted. The silver money in the sacks was just as much a necessity to conduct the gaming to be done there as were the tables and other paraphernalia. The money was delivered to them in bulk, in sacks, and was kept in bulk, unmixed with the money of the employes, and for the purpose of conducting a crap game, and for no other purpose. They had no right or authority to use it for any other purpose . The tables and other paraphernalia were placed under their charge for the same purpose. They took the same right and title to the money that they did to the other personal property there—nothing more, nothing less—the right to possess and use it for the business which they had been employed to manage and control. They had no interest in the business in which they were employed, or in the profits thereof. They shared no profits or losses, and there were no profits paid employes. They were simply paid employes. The money taken by the officers was a part and parcel of the money so delivered to said employes. The very moment those employes should have undertaken to divert the money placed in their hands for use in that gambling to other uses or purposes, or to appropriate it to their own personal use, a right of action, on demand, would have accrued to plaintiffs in error against such employes for money had and received."

This reads nearly all right, but when in the next following clause the court alludes to these employes as agents of the proprietor for money in their hands, it misses, it seems to us, a distinction that should be observed. Indeed, unless we lose all sense of what it takes to constitute a valid agency—that it must exist as to something one can authorize another to do in his stead—these employes holding the money were like so many inanimate receptacles of the money. This being so, there was no locus poenitentiae whatsoever, because the money always was and continued to be in the proprietors' hands. A taking it away was not from the possession of employes, but from the possession of the proprietors. The use of it in the gambling game was the proprietors' use,

because they could not lawfully create an agency to so use it. By conclusive presumption of law they were not supposed to be attempting the legally impossible.

FOREIGN CORPORATIONS—DOING BUSINESS SO AS TO BE SUBJECT TO LOCAL JURISDICTION.—That the doing of business in a state of a purely interstate character is said by New York Court of Appeals not to be determinative, necessarily, of the question whether a foreign corporation is subject to process in that state, this court applies what it conceived to be the rule laid down by U. S. Supreme Court. Tauza v. Susquehanna Coal Co., 220 N. Y. 259, 115 N. E. 915.

The rule referred to is according to the decision in the case of International Harvester Co. v. Kentucky, 234 U. S. 579, where the corporation had sales agents in Kentucky who solicited orders for shipments outside the state, with the orders subject to approval of a general agent in the home state, this case distinguishing prior decision by saying: "Here was a continuous course of business in the solicitation of orders which were sent to another state, and in response to which the machines of the Harvester Company were delivered within the State of Kentucky. This was a course of business, not a single transaction."

The Tauza case shows that the coal company had an office in New York in charge of a manager there and it was taking orders and they were sent on to Pennsylvania, where they were finally approved. It was said thus the business showed more clearly a course of business than appeared in the Harvester case.

In allusion to the International Textbook case (217 U. S. 91), it was said the real question is not "merely whether the corporation is here, but whether its activities are so related to interstate commerce that it may by a denial of a license be prevented from being here. * * * We are to say, not whether the business is such that the corporation may be prevented from being here, but whether its business is such that it is here. If, in fact, it is here, not occasionally or casually, but with a fair measure of permanence and continuity, then, whether its business is interstate or local, it is within the jurisdiction of our courts. * * *

The New York court, premising that to hold that a state cannot burden interstate commerce or pass laws which regulate it, quotes from the Harvester case that this "is a long way from holding that the ordinary process of the courts may not reach corporations carrying on business within the state which is wholly of an interstate character." A foreign corporation sending out its salesmen along regular routes to gather in its orders has always been supposed not to subject them to local licenses, whether their calls are frequent or infrequent, but the Harvester case appears to make of regularity in the doing of this a question whether this old rule is subject to limitation. If drummers have their trade territory, is this not a continuous course of business? It does not seem so as clearly as the Tauza case is, but the Supreme Court has injected an inquiry into this sort of dealing that was not there before.

New York Court of Appeals held, however, that if the foreign corporation does nothing but solicit orders in a state as, say, by drummers, this does not subject them to license laws, though sufficient to subject them to process. International Textbook Co. v. Tone, 220 N. Y. 313, 115 N. E. 914.

PLEADING AND PRACTICE—PARTY APPLYING TO BE MADE DEFENDANT.—There seem to be some curious cases in Missouri current legal history. In 84 Cent. L. J. 378 we noted the case of attempted recovery of a contingent fee in a breach of marriage contract. Now we find a liquor case, where one's beer supply being threatened he sought to be made a party defendant to the suit. State ex inf. v. Chicago, R. I. & P. Ry. Co., 193 S. W. 932, in Kansas City Court of Appeals.

The court arrived at the conclusion from prior decision that plaintiffs may make whom they please parties defendant, but no party may insist that he be made a defendant to any legal controversy which is likely to affect his interest in a collateral matter.

We do not come now to quarrel with this principle, but to call attention to the ribald joy of the court at petitioner's expense and its serio-comic laudation of itself in the following excerpt:

"From the record it seems that Ashcrot's reason for desiring to get tangled up in this litigation was that he was very apprehensive that his supply of beer would either be diminished or entirely cut off by the action of the court taken against the railroad. Although he has filed a brief in this court, he has cited no case showing that there is any law permitting him to make himself a party in a case of this kind at any time, much less after the judgment has been rendered against the real defendants. We are at a loss to know what case he stands on unless it is one of his beer cases, but by reason of the fact that our cus-

toms, habits, and practices do not at any time take us anywhere near any beer cases, the case that appellant apparently stands upon cannot very well be adopted or approved by us."

Must it be assumed that the honorable court challenges investigation as to what it doesn't know of the difference between kegs and cases? Possibly, however, it may be thought to prove what it doesn't know when it talks of one standing on a case (keg). When he gets that way it would be likely he would not be able to "stand" at all. At all events, the court was unwilling to be drafted into a "Battle of the Kegs."

COMMERCE—WEBB-KENYON LAW JUSTIFYING PROHIBITION OF USE OF HIGHWAYS IN CARRYING LIQUORS THROUGH A STATE. — In Moragne v. State, 74 So. 862, decided by Alabama Court of Appeals, the facts show a shipment of liquor from Chattanooga, Tenn., to Pensacola, Fla. It was billed to Cave Springs, Ga., by railway and from there by automobile to destination. Defendant was arrested and prosecuted and convicted in Alabama for transporting "over and along any public street or highway" such liquors, etc.

Defendant claimed the liquors were articles in interstate commerce, but the court sets up the Kenyon law as to that.

The court said: "The liquors in question having been received by the defendant for the express purpose of bringing them into this state, to be possessed by him and transported over the public highway, they were not commodities of interstate commerce, and the defendant violated the statutes of the state, and is amenable thereto. The oral charge of the court was in accord with these views, and was free from error, and the charges refused to the defendant for like reasons were properly refused."

Defendant was held properly convicted, and the question occurring to us is, how does the Kenyon law apply to a shipment from one state through a state, with legislation in the latter enabling its exclusion from the second state, to a state, let us assume, in which there is free right of entry by liquor? It well may be that a state has police power over its public highways, but this police power cannot override the rights of interstate commerce, except under the provisions of the Kenyon law. But does not that law confine state legislation to what each state intends for protection of its own citizens?

We do not know why this method of getting liquor from Tennessee to Florida was resorted to, but, if Alabama could prevent its ordinary highways from being used in this way, why may liquor shipped through such a state as Alabama is to another state, be prevented from carriage by a railroad running through the intermediate state?

BRITISH WORKMEN'S COMPENSATION LAW—PROCEDURE.*

The Statute allows employers to contract out of it but subject to strict conditions. Agreements by workmen to forego their right to compensation are in every shape and form invalid, but if an employer has in connection with his establishment a scheme of benefits, insurance or compensation which the Registrar of Friendly Societies certifies is not less favorable to the workman than the statute, then while that certificate is in force the employer may contract with any of his workmen that the provisions of his scheme shall be substituted for the provisions of the Act. In order that the scheme may be approved it is necessary, in addition to its being equal in benefit to the statutory scheme, that a majority of the workmen to be affected approve of it by ballot; that the scheme does not compel a workman to join in it as a condition of his hiring; and that the scheme contains provisions enabling a workman to withdraw from it.

The Act also takes care to prevent an employer from escaping liability by contracting with someone else to provide labor or to execute work, and in the sections relating to sub-contracting it is provided that the workman employed by a sub-contractor has in a sense a double security for his compensation. The sub-contractor may be and often is a man of poor financial standing and consequently he could not pay compensation. The Act gives the workman

*This is the second of a series of articles on this subject, by Mr. Mackay. The first article appeared in Cent. L. J. 84, p. 302. Others will follow.

the option of proceeding against either, but the principal employer, if found liable to compensation, is given a right of indemnity against the sub-contractor who directly employed the workman. To this rule there is enacted the exception that whether the contract in question relates to threshing, ploughing or other agricultural work and the sub-contractor provides and uses machinery driven by mechanical power for the purpose of the work, he and he alone shall be liable to compensate his own workmen.

The Act also safeguards the interests of workmen in the event of the employer becoming bankrupt. In that case if the employer is injured the Act transfers to the workman a direct claim against his Insurance Company, in effect substituting the Insurance Company for the bankrupt employer, and if the liability of the insurers to the workman is less than the liability of the employer to the workman, the workman may claim for the balance in the bankruptcy or liquidation of the employer; and in the event of the workman so claiming, his claim to the extent of £100 is put among the debts which are paid in full in priority to ordinary creditors.

Another option which the workman has is to recover damages as well as compensation. Thus, while the Act allows compensation, it only, as we shall afterward see, gives a limited sum. It is true the Act gives compensation on the ground of injury being sustained in the employment, and consequently the workman is relieved from proving troublesome questions regarding fault and so on, but though the accident occurred in the employment it may be the case also that it was due to the fault of a third party, in which event the workman has a claim at common law against the third party to any extent that a jury may award him damages. The workman may take proceedings both against the third party and against the employer, but he shall not be entitled to recover both damages and compensation. If the workman recovers compensation from his employer then the employer is given a right of relief against the third party whose fault was the cause of the injury.

In concluding the above general account of procedure under the Statute, we may refer to an interesting experiment which this legislation introduces, namely, the power given to the arbiters if they think fit to summon a medical man to sit with them during the trial of the case as assessor. It is always in the discretion of the court whether this should be allowed or not. The point is brought up by way of a motion by either party. The judge, however, is bound to decide the facts of the case himself. No doubt the opinion of his assessor carries weight, but the assessor is not allowed to make findings in fact or cross-examine witnesses. He is, strictly speaking, confined to his own province of medical opinion; thus in one case it was expressly decided that the arbiter cannot accept the assessor's opinion that the capacity was due to the accident when the general trend of the findings negatived that view.

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DUTY OF CARRIER AS TO SAFETY AND CONVENIENCE OF ITS STATIONS AND APPROACHES.

It is not the purpose of this article to discuss either the common law or statutory obligation of a railroad company to establish and construct stations for waiting passengers. But the discussion will be limited to the duty of a railroad company which has already constructed a station or which has established a point as a place for the reception and discharge of passengers and has invited the public to take and leave its trains at such place. However, we will eliminate the cases involving the duty of the carrier with respect to the safety of passengers while actually getting on and off its cars, because they involve a condition that differs materially from what is ordinarily re-

garded as the situation of a passenger at the station. In the case of a passenger getting on or off the cars, the carrier must generally exercise the highest degree of care for his safety; but in the case of a passenger at the station, only ordinary care is required of the carrier.

It is generally recognized as the duty of a railroad company to provide reasonably safe passage and approaches to and from its trains for the benefit of its passengers, and to this end to keep its depot, waiting rooms, platforms, and passage ways to and from its cars, and all other portions of its station grounds to which passengers will naturally resort in going upon or leaving its trains, in a reasonably safe condition for the purposes intended. While this duty is primarily for the benefit of its passengers, yet it is extended in favor of persons going to the railroad station or passing over the depot grounds in a proper manner and for a proper purpose, as for the purpose of becoming a passenger, or meeting incoming passengers, or taking leave of passengers, or transacting business connected with the company or its employes. The duty has also been held applicable to hotel runners allowed by the railroad to solicit custom; to persons at the station to deliver packages to persons on trains; and to persons permitted through long years to use the station as a passway between streets.[1]

The railroad is not an insurer of the safety of its station houses, premises, depot grounds, passage ways, etc.; neither is it held to the highest or extraordinary degree of care which the law puts upon it to promote the safety of its passengers after they have boarded a train for the purpose of transit and have committed their personal safety entirely to the railroad; but the duty imposed is that the railroad shall exercise reasonable care to keep its premises in such a condition that those lawfully entitled to go there and use the premises shall not be unnecessarily exposed to danger. Stated otherwise, the general rule makes it the duty of the carrier to exercise reasonable care in the construction and maintenance of its stations, platforms and approaches to protect passengers using ordinary care, from injury. The highest degree of care in the matter of station accommodations is not demanded, but the carrier will be liable for injuries from defective premises that are unsafe to its knowledge and where the likelihood of injury therefrom ought to have been seen.[2]

In a very few instances carriers have been held to the exercise of the same high degree of care for the safety of passengers at stations, as for their safety during transportation.[3]

In a few cases the imposition of the high degree of care upon the carrier seems to be the result more of the special circumstances of the case than of any expressed desire of the court to lay down a general proposition of law. This is observable in cases holding the railroad company liable for the exercise of an extraordinary degree of care in respect to a bridge or elevated platform on the railroad company's property which is used for an approach to the station and over which passengers are invited to enter the premises for the purpose of taking passage where it joins an open trestle on the same level onto which persons are liable to walk while crossing the bridge;[4] and in guarding a passenger against pitfalls, where, in company with, and upon the invitation of, the conductor of a train which has stopped at some distance from the station, he is taking the course indicated by

(1) Railroad v. Cheatham, 118 Tenn. 188; 3 Thompson on Negligence, p. 143; 8 Thompson on Negligence (White's Supplement) p. 441; 33 Cyc. 762.

(2) 3 Thompson on Negligence, pp. 143-144; White's Supplement to Thompson on Negligence, p. 490; 6 Cyc. 605.

(3) Knight v. Portland, etc., Railroad, 56 Mo. 234; Freemont, etc., Valley R. Co. v. Hagblad, 72 Neb. 773; Brackett v. Southern R. Co. (S. C.), 70 S. E. 1026, and Louisville, etc., R. Co. v. Lucas, 119 Ind. 583, 6 L. R. A. 193.

(4) Johnson v. Charlotte C. & A. R. Co., 39 S. C. 162, 20 L. R. A. 520.

the conductor, to reach the train for the purpose of boarding it.[5]

The great majority of cases, while differing verbally as to the so-called measure of care required at stations, demand, in some form of expression or another, a lesser measure of care for the safety of passengers at stations than is usually imposed upon the carrier while in the act of transportation. In some of these cases, it is held that the railroad company must exercise no higher degree of care in the construction, maintenance and lighting of its premises for use by passengers, than an individual owner of premises used for ordinary purposes;[6] other cases declare that since a passenger's entrance to the carrier's station grounds and depot is characterized by none of the hazards incident to the journey itself, the carrier is bound to exercies only a reasonable degree of care for the protection of its passengers in view of the dangers to be apprehended.[7] The better rule, however, seems to be that the carrier shall exercise reasonable care to maintain its stations, platforms and approaches, so that they shall be reasonably safe for the uses for which they are intended by passengers using ordinary care for their own protection and safety.[8]

This duty requires the railroad to keep in safe condition all portions of its platforms and approaches thereto, to which the public does or would naturally resort, and all portions of its station grounds reasonably near to the platforms, where passengers, or those who have purchased tickets with a view to taking passage on its cars, would naturally or ordinarily be likely to go. Most states hold that the duty to exercise reasonable care in the maintenance of stations and station grounds applies to any part of the premises where it is made necessary for the passenger to go to enter the station or board the train; and some states hold that this liability of the carrier applies to approaches provided by others, but in general made use of by passengers, with the express or implied approval of the carrier.[9]

It has been held, too, that a carrier is liable for injuries sustained by a person approaching its station in the observation of due care over defective premises of a third person adjoining the railroad premises where such approach was the only means of ingress and egress, or where such approach was used with the knowledge and under the implied invitation of the carrier.

In Cotant v. Boone Suburban R. Co.[10] it was held that a railway company, which, expressly or by implication, invited its passengers to use a stile over a wire fence in leaving its grounds, was bound to exercise at least ordinary care in seeing that it was properly constructed and in good repair, although it was not erected by the company, and the defective part was not on its property, but on the property of another, where it had no right to go to make inspection or repairs.

And in Cross v. Lake Shore & M. S. R. Co.,[11] and Lemon v. Grand Rapids & I. R. Co.,[12] it was held that if a railroad company had, without objection, notice or protest, permitted its passengers to cross its depot grounds on a path not laid out by the company, then it was its duty to keep its grounds along and near such path in a reasonably safe condition for the coming and going of its passengers; and it made no difference that the company had provided another and safer way by which passengers could have gone.

(5) San Antonio, etc., R. Co. v. Turney, 33 Tex. Civ. App. 626, 78 S. W. 256.

(6) Randolph v. Chicago, etc., R. Co., 106 Mo. App. 646; Chase v. R. Co., 134 Mo. App. 655.

(7) Falls v. R. Co., 97 Cal. 114; Taylor v. Pennsylvania Co., 50 Fed. 755; Pennsylvania Co. v. Marion, 104 Ind. 239.

(8) Cases collated in note to St. Louis, etc., R. Co. v. Woods, 33 L. R. A. (N. S.), 862 to 867.

(9) 3 Thompson on Negligence, pp. 146-147; White's Supplement to Thompson on Negligence, pp. 490-491; 6 Cyc. 606.

(10) 125 Ia. 46, 69 L. R. A. 982.

(11) 69 Mich. 363.

(12) 136 Mich. 647.

So, the fact that an approach to a passenger station was constructed by town authorities does not excuse the railroad company from its duty to exercise ordinary care to keep it free from danger to its patrons.[13]

And a carrier's duty to exercise ordinary care in respect to the physical condition and proper lighting of a walk leading to a boat landing is not defeated by the fact that the walk is upon a public street, where the street has never been opened as such, nor used except by the carrier and those doing business with it.[14]

On the other hand it has been held that the carrier is not liable where the injuries are occasioned by defects in the premises remote from the portion intended for the use of passengers, as in one case, a corner of the depot grounds 130 feet from the depot proper, occupied by a fuel company as a wood yard, and there was no occasion for the intending passenger to cross over the portion of the carrier's premises to reach the depot.[15]

Again it has been held that a railroad company is not bound to fence its premises about a station to prevent passengers from taking a short cut across them at night for the purpose of reaching the train sooner than by the customary way; but if the company hold out an inducement or invitation to its patrons to do so, it will be liable for injuries received on account of the defective condition of the premises so traversed.[16]

Where the carrier performs its full duty in providing safe approaches for passengers to reach its station, it will not be liable for injuries to persons who refuse to use these passage ways and approach or leave the station in some other way which is dangerous; but, of course, if a safe way is not indicated and the passenger without negligence on his part takes an unsafe way, the carrier will be liable for resulting injury.[17]

In the case of Woods v. White Star Line[18] it was held that a carrier is not bound to improve and maintain in a safe condition every cross or short cut over neighboring property which individuals may adopt in reaching its station or landing place, although the use is sufficient to create a visible path, if it does nothing to induce the public to believe that it has provided the path or holds it out as safe.

In Perego v. Lake Shore & M. S. R. Co.[19] it was said that where a carrier has provided a safe approach, and this is sufficiently indicated to the public, it is the legal duty of passengers to go to and from the station in the way provided, and a passenger choosing to depart from the safe approach and taking a dangerous way, against which warning notices are posted, and where the danger is apparent, assumes the risk.

In Sturgis v. Detroit, G. H. & M. R. Co.[20] it was said that a carrier is not bound to suppose that passengers who do not know the safe way provided by it will neglect the way open to their view, and go off in the darkness somewhere else, and that a company which had provided all reasonable facilities for ingress and egress from its station house was not liable to a passenger who was injured in a cattle guard while following the railroad track merely because that was a shorter cut from the depot to the village than was furnished by the regular road.

In East Tenn. V. & G. R. Co. v. Watson[21] it appeared that two bridges over a creek connected the veranda of a hotel or

(13) St. Lowe, etc., R. Co. v. Caldwell, 93 Ark. 286, 124 S. W. 1034.
(14) Skottome v. R. R. Co., 22 Ore. 430, 16 L. R. A. 593.
(15) Holcombe v. Southern R. Co., 66 S. C. 6; 44 S. E. 68; Davis v. Houston, etc., R. Co., 29 Tex. Civ. App. 52, 68 S. W. 733.
(16) Thompson on Negligence, Vol. 3, p. 147.
(17) 6 Cyc. 606; Thompson on Negligence, Vol. 8 (White's Supplement) Sec. 2699; Missouri Pacific R. Co. v. Long, 81 Tex. 253, 16 S. W. 1016; Texas. etc., R. Co. v. Brown, 78 Tex. 397, 14 S. W. 1034; Gulf, etc., R. Co. v. Hodges, 24 S. W. 563.
(18) 160 Mich. 540, 125 N. W. 396.
(19) Mich, 122 N. W. 535.
(20) 72 Mich. 619.
(21) 94 Ala. 634.

eating house for passengers with the railroad company's platform; that the bridges were built by the hotel company on the railroad right of way; that the railroad company had not used for three years, and had never repaired or taken control of, one of the bridges, on which a passenger was injured by falling into a hole. It was held that the passenger was entitled to act on the appearance of things, and that he might well suppose that he was invited to take either bridge, and the railroad company was liable for his injury, in the absence of contributory negligence.

In Louisville & Nashville R. Co. v. Hobbs[22] it was held that a railroad company owes no duty to light or guard an excavation on its property near a pathway on its right of way, which has, to its knowledge, been used by the public generally for many years, so as to render it liable for one who, after alighting from its train on a dark night, attempts to follow such pathway, and falls into the excavation, to his injury, if the excavation is some distance from the depot grounds and is also far enough from the path to enable persons using it to do so with perfect safety, so long as they remain in the path.

But in St. Louis & S. F. R. Co. v. Caldwell[23] it was held that the mere fact that the municipal authorities had constructed the passage way which was an approach to the station did not absolve the railroad company from the duty of exercising ordinary care in freeing it from danger, where it appeared that it was on the railroad right of way, and was habitually used by its patrons in passing to and from the station.

In Carter v. Rockford & Interurban R. Co.[24] it was said that it is immaterial how many ways of ingress or egress a carrier maintains or suffers to be maintained to and from its station; that it is bound to keep each in a reasonably safe state of repair, and cannot escape liability by saying it had another safe way, if a defective one is open to use, and the injured person is guilty of no negligence in taking it.

The railroad company was held liable where it had constructed a cattle guard in the highway at a place so near to the pathway leading from the highway to its station that one in attempting to reach the highway fell into the guard and was injured.[25]

The duty imposed upon a railroad company to exercise ordinary care for the safety of its passengers in going to and departing from its trains is not fully discharged by providing a reasonably safe platform with reasonably safe approaches thereto, but it is still the duty of the carrier to see that the platform and approaches are reasonably lighted at night for a sufficient time before and after the departure of trains to enable passengers to enter and depart therefrom with reasonably safety. This duty cannot be delegated, and is not excused by the fact that there is no public lighting system in the town in which the station is located. In one case where a railroad company had made diligent efforts to have the city furnish lights for its platforms where passengers alighted, and the city had undertaken to do so, it was held that if the city was negligent in the performance of this duty such negligence was to be imputed to the railroad company.[26] The number and character of the lights depend on the character and extent of the business transacted at the particular station.[27] This duty, however, is not extended in favor of bare licensees on the carrier's premises at other times.

In conclusion, let it be understood that the duty owing to passengers by the carrier in respect to the safety of its platform and approaches does not extend to mere idlers

(22) 155 Ky. 130.
(23) 93 Ark. 286.
(24) 147 Wis. 86.
(25) Hoffman v. New York Contral & H. R. R. Co., 75 N. Y. 605.
(26) Owen v. Washington, etc., R. Co., 29 Wash. 207.
(27) St. Louis, etc., R. Co. v. Marshall, 81 Pac. 169.

and spectators. Although it is sometimes said that the depot grounds and passenger stations of a railroad company are quasi-public, by reason of the general use to which they are appropriated, yet persons resorting there for their own convenience or for the transaction of business not in connection with the railroad company, are not entitled to hold the company responsible except for wanton or willful injury inflicted upon them.

CHAS. H. SMITH.

Knoxville, Tenn.

MASTER AND SERVANT—EMPLOYMENT.

MOLINE LUMBER CO. v. HARRISON.

Supreme Court of Arkansas. March 26, 1917.

194 S. W. 25.

Defendant's manager testified that he engaged plaintiff as woods foreman at the rate of $1,800 a year, payable at the rate of $150 per month, while plaintiff asserted that he was told the position paid $1,800 a year. Held that, as a fixed period for duration of the employment was named, and it was stated that payments would be made in installments of $150 per month, a contract of employment for one year was entered into, and plaintiff might on defendant's breach prior to the expiration of the year recover damages.

McCULLOCH, C. J. This is an action instituted by the plaintiff, Harrison, against his employer to recover wages alleged to be due under a contract which the defendant had broken. The plaintiff alleges that he was employed by defendant Moline Lumber Company, to work for the latter as woods foreman for a period of one year at a salary of $1,800 a year, payable monthly, and that after working for the defendant for something over three months he was discharged without cause. Plaintiff further alleges that for the greater portion of the unexpired period of the contract he was unable to secure employment elsewhere, and that by reason of the discharge he sustained damages to the extent of the unpaid wages or salary for the remainder of the period. Plaintiff sued to recover the sum of $1,240, and on the trial of the case the jury rendered a verdict in favor of the plaintiff for the sum of $749. The evidence shows that plaintiff was unable to secure employment for the whole of the remaining period of the alleged contract, but that he did secure employment for a portion of the time, and it is manifest that the jury only allowed for the time during which the plaintiff was actually out of employment. The only question involved in this appeal is whether or not the evidence is sufficient to sustain the finding that there was a contract of employment entered into between plaintiff and defendant to cover a period of one year. There is very little conflict in the testimony on the material points so far as the case is presented here. Defendant, in dealing with plaintiff, was represented by its manager, Mr. W. R. Day, and on a certain day in June, 1914, plaintiff talked with Mr. Day over the telephone from a lumber camp with regard to employment as woods foreman. Plaintiff's version of the contract was that after a few preliminary remarks passing between them concerning the matter of the work to be done, he asked Day "how much the job paid," and that Day replied, "The job pays $1,800 a year." Day testified that during the telephone conversation described plaintiff asked him what the job paid, and he replied as follows:

"Well, we paid Mr. Goss $1,900 a year, and I will pay you $1,800, at the rate of $150 per month, and Mr. Harrison said that is satisfactory."

They agree that nothing else was ever said between them concerning the terms of the employment. It was agreed in the conversation referred to that plaintiff was to go to Malvern to see Mr. Day and look over the timber land to ascertain the character of the work, and that he went up there to see Mr. Day about a week later, and that they went out together to look over the ground, that nothing was said about the terms of the employment. Plaintiff went to work on the 8th of June, 1914, and after working until June 17th he received a note from Mr. Day in the following words:

"6-17-14.

"Mr. Harrison: You should have Mr. Lee to arrange Div. of Supt. and clerks' salaries so as to include your salary at $150.00 per month.

"W. R. D."

There is no proof of custom or usage with reference to the period of employment for this character of service, and we are left entirely to the somewhat indefinite words of the contract to determine whether or not it constituted a contract for a period of service for a year or whether it was merely an employment at will. The question is by no means free of doubt, and

the authorities, though very numerous, are sharply conflicting. In a note to the case of Warden v. Hinds, 25 L. R. A. (N. S.) 529, the authorities on the subject are collated, and it is said that the conflict is such as to leave doubt as to which view is better supported. One line of cases holds that "a hiring at so much per year, month or week is in the absence of other circumstances controlling its duration, an indefinite hiring only, terminable at the will of either party;" whereas the other line of authorities holds to the view that, where the matter of duration in a contract of employment is not specified in so many words, a hiring being at a specified rate per year, month, or week imports a hiring for the full period named. The cases are carefully reviewed by the Supreme Court of Massachusetts in Maynard v. Royal Worcester Corset Co., 200 Mass. 1, 85 N. E. 877, and the weight of authority is declared to be in favor of the rule that a hiring at so much a year, month or week is, in the absence of any other consideration impairing the force of the circumstances, sufficient to sustain a finding that the hiring was for that period. There are many English as well as American cases sustaining that view, among which the following are cited: Emmens v. Elderton, 4 H. L. Cas. 624; Foxall v. International Land Credit Co., 16 L. T. (N. S.) 637; Buckingham v. Surrey & Hants Canal Co., 46 L. T. (N. S.) 885; Horn v. Western Land Association, 22 Minn. 233; Smith v. Theobald, 86 Ky. 141, 5 S. W. 394; Moss v. Decatur Land Improvement & Furnace Co., 93 Ala. 269, 9 South. 188, 30 Am. St. Rep. 55; Chamberlain v. Detroit Stove Works, 103 Mich. 124, 61 N. W. 532; Kellogg v. Citizens' Ins. Co., 94 Wis. 554, 69 N. W. 362; Norton v. Cowell, 65 Md. 359, 4 Atl. 408, 57 Am. Rep. 331; Beach v. Mullin, 34 N. J. Law 344; Magarahan v. Wright, 83 Ga. 773, 10 S. E. 584.

That is, we think, the best view of the matter; for, where a unit of time is described in mentioning the compensation without any other reference to time, it is fairly inferable that the parties intended to contract for that period of time. Of course, the terms thus specified are to some extent indefinite, and may be controlled by the circumstances of any particular case, but in the absence of countervailing circumstances we think that a trial court or jury is warranted in construing the terms of the contract to be for a hiring for the unit of time specified in fixing the wages or salary. The language of the contract now before us is even stronger in that view than that used in some of the cases cited. In fact, we think that the testimony of Mr. Day, the defendant's manager, makes out a stronger case than does the statement of the plaintiff himself; for he states the terms at $1,800 a year, and follows with the specification "at the rate of $150 a month," indicating that the period of hiring was to be for a year, but that the payments were to be made in monthly installments. It is earnestly insisted by counsel for defendants that two of the early decisions of this court place the court in line with authorities which hold to the view that a specification of the compensation for a certain period is not sufficient evidence of a contract to hire for that period. Wright v. Morris, 15 Ark. 444; Haney v. Caldwell, 35 Ark. 156. In the case first cited (Wright v. Morris) the contract was one for the hire of an overseer "to oversee for Wright that year, at the rate of $500 per annum; that Trulove was to make a fair average crop, and, if he failed to do this, he was to forfeit his wages." This court said that the language used did not constitute a special contract for a definite time at a fixed price, but that it was a contract to oversee at the rate of $500, not for $500. Trulove was discharged before the crop was made and gathered, and the question was whether he was entitled to specified compensation of $500 for the year, or for the making of the crop, and this court held that there was no agreement as to the length of time Trulove was to serve, as the contract only fixed the rate instead of the period of time, and that "it must necessarily have been intended that the engagement should continue until after the crop was made." That case therefore has no application to the contract involved in the present case, nor is there any analogy between the facts of this case and those in Haney v. Caldwell, supra, where the contract of employment was evidenced by a letter in which Caldwell stated to Haney that:

"You are hereby employed to act as my engineer in connection with my contract for the completion of the Little Rock & Ft. Smith Railroad, at a salary of $2,500 per annum."

Haney served for more than a year. The court held that this was not a contract for a definite time at a fixed price. The reason for that ruling is plain; for there was a specification of employment as engineer "in connection with my contract for the completion of the Little Rock & Ft. Smith Railroad," which shows that the employment was not for a year, but merely at the rate per annum mentioned in the letter. We do not regard either of those cases as being against the views which we express in

the present case. From this view of the matter the evidence was sufficient to sustain the finding, and, as that is the only ground urged for the reversal, it follows that the judgment must be affirmed; and it is so ordered.

NOTE.—*Indefinite Hiring is Hiring at Will.*—It has been said that: "In the United States a general or indefinite hiring is presumed to be a hiring at will, in the absence of evidence of custom or of facts and circumstances showing a contrary intention on the part of parties. While it is generally held that the fact of a hiring at so much per day, week, month, quarter or year, raises no presumption that the hiring was for such a period, but only at the rate fixed for whatever period the party may serve, yet the rate and mode of payment are often determinative of the period of service, and in some cases it has been held that they raise a presumption as to the period of service." 26 Cyc. 974, to which are cited numerous cases.

In Thullen v. Triumph Electric Co., 227 Fed. 837, 142 C. C. A. 361, the rule of indefiniteness making an employment at will was applied to a contract fixing a yearly rate with installments by the month. Letters showed first a period beginning and ending at a date in one year to the same date the next year for $5,000, then for the next year at the rate of $6,000, with so many shares of common stock at the end of each period. It was stated, however, that the second period was to begin "provided you have remained in our employ that length of time." It was said the burden of proof was on the employe to show the time was certain where he was discharged during the second year. There seemed little of certainty, except as that could be gathered from the shares of stock to be given. That, however, was offset by the statement quoted above. He being discharged at the end of three months, three shares of stock were given him in addition to three months' salary.

In Hogle v. De Long Co., 248 Pa. 471, 94 Atl. 190, it was said: "In a contract of hiring, when no definite period is expressed, in the absence of facts and circumstances showing a different intention, the law will presume a hiring at will." This was said as to plaintiff's statement showing a salary of $3,000 per year, with an increase to $3,500 for the second and third years and his discharge in two weeks after the fourth year began. He sued for fifty weeks of the fourth year. Demurrer was sustained. The court cited Labatt on Master and Servant, Sec. 160, as saying: "The preponderance of American authority in favor of the doctrine that an indefinite hiring is presumptively a hiring at will is so great that it is now scarcely open to criticism."

It is said it was plaintiff's duty to show additional facts and circumstances warranting the inference that something more was in contemplation of the parties than was set out in the statement of plaintiff's case.

Cuppy v. Stollwerck Bros., 216 N. Y. 591, 111 N. E. 249, shows that New York Court of Appeals agrees to the principle above announced, but, in reversing Appellate Division on this question, it construes writings as fixing an employment not at the rate of one year, but as an employment for one year. The contract appeared in correspondence. First plaintiff wrote: "I shall expect to receive * * * at the rate of $10,000 per year." Later he asked in letter: "Do you confirm the agreement terms as per my letter 16th day December, 15th day of November, twelve months?" To this there was reply: "You have authority with certain limits." To this plaintiff answered: "If you will not agree to abide by the conditions of letters dated 16th December, 15th November, twelve months, I hereby offer my resignation," etc. Defendants answered: "Wish to see you satisfied working with enthusiasm, agree to your proposals for twelve months." The court thought that considering the correspondence as a whole, it was clear there was a contract for a definite period.

The subject has been annotated quite extensively in 25 L. R. A. (N. S.) 529, and 51 L. R. A. (N. S.) 629, and this New York case goes as far perhaps as any cases in favor of holding the fixing of a definite period. The burden seems thrown upon one alleging there is such a period to prove it. Indefiniteness is apt to be deduced from any reasonable uncertainty in such contracts.

C.

ITEMS OF PROFESSIONAL INTEREST.

PROGRAM OF THE MEETING OF THE NEW JERSEY BAR ASSOCIATION.

The meeting of the New Jersey Bar Association will take place June 15th and 16th at the Hotel Chelsea, Atlantic City. The Secretary writes us that the first day, June 15th, will be devoted to business and reports of committees. The annual dinner will be given on the evening of June 15th.

The Governor of the state and several of the Supreme Justices will be present.

On June 16th addresses will be delivered by Mr. Frank Bergen, of Newark; Mr. Frederick W. Gnichtel, of Trenton, and Prof. John H. Wigmore.

BOOK REVIEW

HIGGINS' ESSAYS ON JURISPRUDENCE AND ALLIED SUBJECTS.

Too infrequently in this country do lawyers and judges take time from the busy round of their labors to set down in order their observations, founded in experience, of the administration of law and the growth of juristic systems.

For this reason we welcome the little volume that comes to our desk from the pen of our esteemed friend, Hon. Joseph C. Higgins, judge of the Tennessee Court of Appeals. The book is entitled, Essays in Jurisprudence and Allied Subjects.

The treatment is discursive and, for that reason, more readable. The author is not trying to evolve a system of jurisprudence but to suggest here and there an illuminating thought as to the present and future condition of the law and its administration.

The twenty-two short chapters are so many short articles on related but not necessarily correlated subjects. These chapter headings give a clear idea of the scope of the author's thought. They are in their order as follows:

The whyfor of litigation; jurisprudence as a science; persistence and recurrence of judicial conceptions; technicalities; dignity of litigation; appeals; argument of counsel; progressive juries; legal principles; law and equity; legal maxims; judicial tenure; things in themselves; judicial opinions and judicial precedent; instrument drafting; law-making other than by legislative acts; codification; obliteration of state lines; distributive justice; the social aspect of judicial decisions; some aspects of socialism; wherein law schools may increase their usefulness.

The author believes in "properly motived litigation" and declares "the more of that the better." He says: "The properly motived and inspired litigant who refuses to treat with wrongdoers, who insist upon the surrender of justice, is a social benefactor; and hence the worth and social value of the right kind of litigation. There must be no legal cowards. And the supreme social power must see to it that the arena be open and the fight fair." This thought is full of meat and can be worked out in many different directions.

We wish we had space to quote more from this little book, but further opportunity to do so may be afforded at some future time with the consent of the author. We congratulate Judge Higgins, who is still a young man on this his first plunge into the literature of the law and shall look forward with anticipations to some time in the near future when the muse of the law shall again grip the thought and imagination of the learned judge and author.

Printed in one small volume of 105 pages and published by the author *pro se*.

HUMOR OF THE LAW.

There is a young lawyer of this town who is as modest as he is witty.

"How much," asked a client of his, "will your opinion be worth in this case?"

"Really," said the young legal light, "I can't say. But I can tell you what I am going to charge you for it."

Gov. Marcus S. Holcomb said, the other day in Hartford, apropos of the Mexican situation:

"That was a good retort on our secretary's part. Yes, it was as crushing a retort as the young lady's:

"'Lots of women have no sense of humor,' a young man said to a young lady.

"'Well, what of that?' she sneered. 'Lots of men have no sense at all.'"

One of the several hundred last-chance taxpayers at the new courthouse recently ran into difficulties when he made a valiant and determined effort to find someone to whom he could pay his "indelible tax."

Busy deputies in Treasurer O'Brien's office passed the stranger along with the idea he was either "stringing" them, or had stopped too long at bars infesting the path of the unwary taxpayer on the way to the courthouse.

The mystery was not solved until the man was finally turned over to Miss Marie Friebolin, trouble clerk.

"Maybe it's delinquent tax you want to pay?" she queried.

It was.—Ohio Law Bulletin.

Darwin, writing his "Origin of Species," did not find it essential to prefix "aforesaid" to every repetition of the word "species." Fabre, the "Homer of Insect Life," did not find it necessary to write: "A beetle, as aforesaid, is an insect, to-wit, a creature with six several and particular and distinct legs, a head, which is located in the forepart of the aforesaid beetle, party of the first part, and a thorax immediately behind the aforesaid head, and an abdomen immediately and directly behind the aforesaid thorax and attached to the aforesaid thorax of the aforesaid beetle, the aforesaid party of the first part."

But if any lawyer were called upon to describe a beetle, the chances are that he would do it as aforesaid.—San Francisco Chronicle.

WEEKLY DIGEST

Weekly Digest of ALL the Important Opinions of ALL the State and Territorial Courts of Last Resort and of ALL the Federal Courts.

Copy of Opinion in any case referred to in this digest may be procured by sending 25 cents to us or to the West Pub. Co. St. Paul, Minn.

1. **Acknowledgment**—Wife.—A mortgage of the homestead to a bank, the wife's separate acknowledgment of which was taken by an officer and stockholder of the bank, is invalid against direct attack.—Walker v. Baker, Ala., 74 So. 368.

2. **Adverse Possession**—Prescription.—Where a turnpike company purchased a lot on which to erect a building for the accommodation of its toligate keeper, immediately took charge of the lot, erected a dwelling thereon, and occupied it continuously with its tenants for 21 years or more, it had perfect title by adverse possession.—Huber v. Johnson, Ky., 192 S. W. 821.

3.——Prescription.—Where the grantee entered into possession and held land for 15 years and made valuable improvements thereon to the grantor's knowledge and without his objection, the grantee acquired title by adverse possession, as against the grantor, to part omitted from the deed.—Mott v. Grosenheider, Mo., 192 S. W. 937.

4. **Attachment**—Vacating Judgment.—Judgment in a foreign attachment suit against an individual will not be opened merely because defendant was prevented from appearing and contesting on the merits by inability to furnish the amount of special bail demanded, where he had knowledge of the attachment from the time it was made.—Morgan v. Ownbey, Del., 100 Atl. 411.

5. **Attorney and Client**—Damages. — Where attorney in bringing employe's personal injury action neglected to give notice required by Rev. Laws, c. 106, § 75, resulting in his client's defeat, and the client, in suing attorney, failed to show other negligence, his only loss was his expense in preparing for trial.—McLellan v. Fuller, Mass., 115 N. E. 481.

6. **Bankruptcy**—Attorney Fee.—A mortgagee held not entitled to attorney's fee provided for in mortgage note, property being sold free from liens in bankruptcy, though note had been placed in hands of an attorney.—Gugel v. New Orleans Nat. Bank, U. S. C. C. A., 239 Fed. 676.

7.——Discharge.—Where bankrupt fails to apply in due time for discharge, or is denied discharge from debts provable in one proceeding, he cannot be discharged from such debts in subsequent proceeding.—In re Warnock, U. S. D. C., 239 Fed. 779.

8.——Discretion.—The refusal to permit an involuntary petition in bankruptcy to be verified at the hearing because the testimony of petitioners showed that they had no knowledge of the facts therein stated was not an abuse of discretion.—In re Frank, U. S. C. C. A., 239 Fed. 709.

9.——Equitable Lien.—Claimant, who made advances to corporation which later became bankrupt, held entitled to an equitable lien on accounts, or proceeds thereof, which the bankrupt corporation agreed to assign to him.—In re Imperial Textile Co., U. S. D. C., 239Fed. 775.

10.——Provable Claim.—A claim against a bankrupt for money received cannot be based on a check secured from claimant by fraud and indorsed to the bankrupt, who was a bona fide purchaser for value without notice.—In re United States Hair Co., U. S. C. C. A., 239 Fed. 703.

11.——Referee.—Where trustee in bankruptcy is not entitled to statutory commissions for general administration of estate out of proceeds of sale of mortgaged property which amount to less than liens, referee is entitled to no commissions.—Gugel v. New Orleans Nat. Bank, U. S. C. C. A., 239 Fed. 676.

12. **Banks and Banking**—Forgery.—A banker agreeing to pay travelers' checks upon the holder signing his name, was liable for their face value after cashing them upon a forged indorsement; a provision requiring an indemnity bond if the checks were lost being inapplicable.—Sullivan v. Knauth, N. Y., 115 N. E. 460.

13.——Officers.—Where the president of a bank is in possession of a promissory note made by a customer and indorsed in blank by the payee, the bank may lawfully discount the note and pay the proceeds to the individual account of the holder.—Lincoln Nat. Bank of Pittsburgh v. Miller, Pa., 100 Atl. 269.

14.——Pleading.—Petition alleging that under arrangement with defendant bank a stock buyer bought live stock from plaintiff, giving his check on bank, and sold the stock and deposited proceeds to meet the check, stated cause of action against bank for amount of unpaid check.—Goeken v. Bank of Palmer, Kan., 163 Pac. 636.

15. **Bills and Notes**—Contribution.—The right of contribution in the order of indorsement applies only when the contracts of the indorsers are new and subsequent to the original contract, and not where the indorsers sign the note at the same time with the principal, and as accommodation indorsers.—Weaver-Dowdy Co. v. Brewer, Ark., 192 S. W. 902.

16.——Duress.—Where, upon threatened insolvency of firm, two creditors and their attorney went to aged parents of a member of the firm, and, by indirect threats to prosecute their son, induced the old people to sign note for son's indebtedness, such note was void as procured by duress.—Spoerer v. Wehland, Md., 100 Atl. 287.

17.——Indorser.—The holder of a check may, on the drawee refusing payment, sue the indorser without returning the check to him, having credited his account with the amount thereof and paid his drafts, reducing his balance below such amount.—Morris v. First State Bank of Dallas, Tex., 192 S. W. 1074.

18.——Mistake.—Money paid on a negotiable instrument under a mistake of fact may be recovered back, however negligent the payor may have been, unless the payment has caused a change in the position of the other party so that it would be unjust to require him to refund —Pittsburgh-Westmoreland Coal Co. v. Kerr, N. Y., 115 N. E. 465, 220 N. Y. 137.

19.——Place of Contract.—In action by subsequent holder of notes given for work to be performed, where contract for transfer of notes was made in Illinois and was to be performed there, its construction and interpretation is to be governed by law of Illinois.—Continental Credit Co. v. Ely, Conn., 100 Atl. 434.

20. **Brokers**—Ratification. — Where broker showed general authority to sell and owner ratified one sale of stock, burden of showing revocation of any limitation on power to make additional sale was on owner, but where owner, after first sale, fixed a higher price, it was necessary for broker to show a renewal of authority to sell at a former price.—Donner v. Wilson, Pa., 100 Atl. 461.

21. **Carriers of Goods**—Action.—The seller, being both consignor and consignee, having indorsed bill of lading, the real purchaser having paid draft on ostensible purchaser, and received the goods, may sue the carrier for their injury. —Nashville, C. & St. L. Ry. v. Abramson-Boone Produce Co., Ala., 74 So. 350.

22.——Act of God.—A wind and rain storm of unusual extent and violence out of range of ordinary human experience is an "act of God" relieving common carrier from liability for destruction of goods.—Harris v. Norfolk Southern R. Co., N. C., 91 S. E. 710.

23.——Delay.—The Carmack Amendment to the Interstate Commerce Act applies to damages caused by delay in transportation as well as to injuries to the property.—Gulf, C. & S. F. Ry. Co. v. Nelson, Tex., 192 S. W. 1056.

24.——Wrongful Removal.—Carrier's unauthorized and wrongful removal of goods from destination after delivery there and consignee's failure to take away requires it to notify owner of probable date of return, the omission of which subjects it to absolute liability for loss of goods between date of return and owner's knowledge thereof.—Belknap v. Baltimore & O. R. Co., W. Va., 91 S. E. 656.

25. **Carriers of Live Stock**—Delay.—In action for negligent delay in interstate transportation of live stock, the mere proof of a schedule adopted by a carrier and that shipment was made within the schedule will not excuse carrier if there is evidence of negligent delay in transportation.—Buel, Pryor & Daniel v. St. Louis & S. F. Ry. Co., Okla., 163 Pac. 536.

26. **Carriers of Passengers** — Contributory Negligence.—A passenger who, without looking, rushes through a door partly open into a dark hallway leading to basement in depot, thinking it a door to toilet, and by stepping across a three-foot landing falls down the stairs and is injured, is guilty of contributory negligence.— Illinois Cent. R. Co. v. Sanderson, Ky., 192 S. W. 869.

27.——Ejection.—Where passenger refused to pay 15 cents additional fare demanded and told conductor he would have to forcibly put the passenger off and that he would make a test case of it, plaintiff was not damaged $250 by his humiliation.—Louisville & N. R. Co. v. Boggs, Ala., 74 So. 337.

28.——Intoxication.—Conductor in charge of a street car, knowing that intoxicated condition of passenger is menace to others, is guilty of negligence in failing to take proper steps to obviate danger.—Virginia Ry. & Power Co. v. Hubbard, Va., 91 S. E. 618.

29.——Negligence.—In case of a passenger injured by the car door closing on his hand when the car was going round a curve, held the carrier could be found negligent in not having the door open far enough to lock.—Colletto v. Hudson & M. R. Co., N. J. 100 Atl. 200.

30.——Ordinary Care.—In going through gate in picket fence maintained by street railroad about its loop, it was not duty of plaintiff, a prospective passenger, to watch the gate lest it close suddenly without warning and injure her. —Earley v. Rhode Island Co., R. I., 100 Atl. 405.

31. **Charities**—Liability for Tort.—Fireman injured through defective condition of fire escape attached to realty of charitable corporation administering trust fund for care and cure of indigent insane could not recover damages against corporation for his injuries.—Loeffler v. Trustees of Sheppard & Enoch Pratt Hospital, Md., 100 Atl. 301.

32.——Trust.—A bequest in trust, the income of which was to be distributed or expended "in purchase of fuel or other necessities for worthy persons not supported at public expense," excepting idlers, gamblers and drunkards, held valid.—Bills v. Pease, Me., 100 Atl. 146.

33. **Commerce**—Employe.—An employe engaged in keeping account of cars, many of which were engaged in interstate commerce, fatally injured after his work was completed for the day and he had left his place of duty, held not engaged in interstate commerce.—Jacoby v. Chicago, M. & St. P. Ry. Co., Wis., 161 N. W. 751.

34.——Mental Anguish.—There can be no recovery under St. 1915, § 1778, subd. 5, for mental anguish arising from delay in delivering interstate telegraph messages, but the addressee's remedy is governed solely by federal statutes.—Durre v. Western Union Telegraph Co., Wis., 161 N. W. 755.

35. **Constitutional Law**—Equal Protection of Law.—The provision of Acts 1915, p. 858, that a person elected coroner must be a practicing physician in good standing is not unconstitutional as denying equal protection of law.—Board of Revenue of Jefferson County v. State, Ala., 74 So. 364.

36.——Equal Protection of Law.—Milwaukee ordinance of November 8, 1915, requiring street railway company to repave its track zone with same material used by city, is not unconstitutional for failure to give equal protection of laws.—State v. Milwaukee Electric Ry. & Light Co., Wis., 161 N. W. 745.

37.——Foreign Attachment.—Delaware foreign attachment statutes, in denying defendant any right to appear upon attachment thereunder without entering special bail, do not violate Const. U. S. Amend. 14, as to due process, although plaintiff, by demanding special bail greater than defendant can furnish, may prevent defendant from appearing at all.—Morgan v. Ownbey, Del., 100 Atl. 411.

38. **Conversion**—Option. — Where option to purchase land was exercised in vendor's lifetime, and he died before the conveyance or the payment of price, there was a conversion of the estate. and his administratrix was properly surcharged with amount of price, though deed was executed by his widow and heirs and consideration was paid to them.—In re Helsel's Estate, Pa., 100 Atl. 462.

37. **Damages**—Aggravation.—A female passenger, injured while on defendant's car, may recover for all injuries resulting from accident, though they were necessarily aggravated by her previous affliction with a tumor.—Virginia Ry. & Power Co. v. Hubbard, Va., 91 S. E. 618.

40.——Attorney and Client.—For negligence of attorney in conducting personal injury case the measure of damages is the amount plaintiff could have recovered in his action against the employer, with interest.—McLellan v. Fuller, Mass., 115 N. E. 481.

41.——Earning Capacity.—In action by passenger against street railway for personal injuries, evidence showing that his salary as salesman had been reduced on account of his physical condition after the accident, and that by reason thereof his future earning capacity was to some extent impaired by the injury, was admissible.—Bamber v. United Rys. Co. of St. Louis, Mo., 192 S. W. 953.

42.——Earning Capacity.—In an action for damages for personal injuries, award for lost time should not be allowed to overlap an award for impairment of ability to earn money so as to allow double damages.—Louisville & N. R. Co. v. Schneider, Ky., 192 S. W. 834.

43. **Deeds**—Subsequently Acquired Title. — Deed conveying "all my right, title, interest, estate, claims and demand, both at law and in equity, as well as in possession or in expectancy, of, in, and to all that certain farm," etc., included and conveyed a subsequently acquired title to the land.—Nance v. Walker, Ala., 74 So. 339.

44. **Divorce**—Jurisdiction.—If defendant in divorce suit is non-resident court is without jurisdiction to enter order, against defendant, exacting contribution for support of children.—Kell v. Kell, Iowa, 161 N. W. 634.

45. **Eminent Domain**—Abutting Property.—That condemnation proceedings were pending for taking of plaintiff's property is no defense to action by him for recovery of damages for negligent act of defendant in grading abutting property in the course of making improvement for which plaintiff's property is sought to be taken.—Mullan v. Belbin, Md., 100 Atl. 384.

46.——Additional Servitude.—Use of streets for supplying inhabitants of town with water is not additional servitude, but only proper or necessary use incident to street, an adjoining owner, although he own fee to center of the street, is not entitled to compensation for new servitude.—Beale v. Town of Tacoma Park, Md., 100 Alt. 379.

47. **Exchange of Property**—Rescission.—Even in trade "unsight and unseen," a party may rescind where he does not receive property or the representative thereof.—Martin v. Gormly, Iowa, 161 N. W. 669.

48.——Damages.—In estimating damages to owner of abutting lot from railroad spur track in public street, the jury may consider nature of track, difficulty of access, location of property, reasonable and probable use, and specific annoyances and inconvenience on presumption that its operation will be continued.—Gram Const. Co. v. Minneapolis, St. P. & S. S. M. Ry. Co., N. D., 161 N. W. 732.

49. **False Pretenses**—Indictment and Information.—Information charging defendant with obtaining property by false pretenses by inducing the signing of the note, but not alleging note to have ever been delivered to payee, failed to charge any offense.—People v. Rippe, Cal., 168 Pac. 506.

50. **Ferries**—Locus in Quo.—Where accident happened on part of ferry premises actually used by ferry company, it was no defense to action for damages to passenger from defect that locus in quo was not within premises demised to company.—Fortein v. Delaware, L. & W. R. Co., N. J., 100 Atl. 194.

51. **Fixtures**—Evidence. — In replevin by partner of tenant for fence wire which the landlord has prevented his removing at the end of lease providing for allowance for tenant's repairs, testimony of landlord that such wire had been used on a permanent fence made a question for the jury whether it had become a fixture.—Taylor v. Walker, Ark., 192 S. W. 895.

52. **Fraud**—Deceit.—Deceit lies where plaintiff has been induced to trade property for worthless second mortgage upon the representations of defendant that the second mortgage was bona fide, and that a mortgagor was responsible,

when in fact the mortgagor was a mere "dummy," and the security worthless.—Martin v. Baldwin, N. J., 100 Atl. 217.

53. **Guaranty**—Ordinary Care.—Where surety signs by reason of fraud of principal as to nature of instrument of guaranty, he will be bound to creditor only where his want of ordinary care and prudence made the deception possible.—Dr. Koch Medical Tea Co. v. Poitras, N. D., 161 N. W. 727.

54.——Separation from Contract.—Where a note, when signed by guarantors, was attached to a contract by which a cashier was authorized to obtain the money thereon and fill in payee's name, and the principal wrongfully sold it to defendant, who did not notify guarantors, the note will not be canceled.—Webb v. Cope, Mo., 192 S. W. 934.

55. **Highways**—Prescription.—Where a road had been bounded on the south by an "old fence" for over 20 years, and plaintiff's present fence occupied a line north of the old fence, it encroached upon the highway, which had become public by prescription.—Card v. Cunningham, Ala., 74 So. 335.

56.——Rule of Road.—If driver of buggy saw fit to give automobile coming up behind entire track by turning to one side, driver of automobile could properly take whole track.—Hoppe v. Peterson, Wis., 161 N. W. 738.

57. **Husband and Wife**—Entirety.—Where a husband and wife owned land by the entireties, the wife can, after death of husband, make a valid and binding agreement for the sale of same and convey good title.—Ginn v. Edmundson, N. C., 9 1S. E. 696.

58.——Married Woman's Act.—The married woman's act, though not exonerating husband from common law liability for wife's torts, yet by permitting wife to sue as a feme sole without joining husband where action concerns her separate property makes her alone liable for negligent management of such property resulting in injury to another without fault.—Leros v. Parker, W. Va., 91 S. E. 660.

59. **Insurance**—Misrepresentation. — Where the application for accident policy required the applicant to say whether an accident policy had ever been canceled, it would not have been a misrepresentation to state that none had been canceled where one had been voluntarily surrendered; there being a distinction between cancellation and surrender.—Wells v. Great Eastern Casualty Co., R. I., 100 Atl. 395.

60.——Reorganization.—Where defendant insurance company assumed obligations of beneficial society in which decedent was member, it succeeded to its rights and privileges under contract, and was liable only to extent that society would have been liable.—Jones v. Commonwealth Casualty Co., Pa., 100 Atl. 450.

61. **Intoxicating Liquors**—Aiding and Abetting.—While a defendant to be guilty of aiding a liquor law violation must contribute to the result, it is sufficient if by prearrangement with the principal he is present to render assistance if it should become necessary.—Bridgeforth v. State, Ala., 74 So. 402.

62.——Beverage.—In suit to enjoin sale of intoxicating liquors, if liquor was sold as a beverage and contained alcohol, it would not be material whether it was actually used as a beverage.—State v. Silka, Iowa, 161 N. W. 703.

63.——Injunction—Injunction does not lie to restrain the lawful shipping in another state of liquor, although shipped into territory in the state of suit governed by local option statutes (Rev. St. 1909 §§ 7227, 7228, 7243).—State ex rel. Weatherby v. Dick & Bros. Quincy Brewing Co., Mo., 192 S. W. 1022.

64.——Nuisance.—The remedy by action in equity to enjoin a public nuisance may be invoked against a place for the sale of intoxicating liquors, though there has been no criminal conviction of the keeper of the place.—State v. Riesen, Wis., 161 N. W. 747.

65. **Insurance**—Tender.—Indemnity company seeking to defeat action on policy guaranteeing fidelity of employe, upon ground that employer has not complied with warranties made in the application, need not tender return of premiums.—Bissinger & Co. v. Massachusetts Bonding & Ins. Co., Ore., 163 Pac. 592.

66. **Landlord and Tenant**—Tenant for Years. —A contract of tenancy from year to year will not be implied, where the tenant holds over for three days owing to his inability to obtain wagons; no legal obligation resting upon him.—Grice v. Todd, Va., 91 S. E. 609.

67. **Libel and Slander**—Circulation of Printed Matter.—A printed article, circulated among voters, charging a member of the grand jury with malfeasance in such public office by protecting the biggest swindler that every stuck the county, was libelous, if untrue.—State v. Fish, N. J., 100 Atl. 181.

68.——Privilege.—If defendant stated to one employe that someone had been stealing his fish and that he would like to see plaintiff about it, but such statement was made without malice and in good faith in the belief that they were true, the statement was privileged.—Wormwood v. Lee, Mass., 115 N. E. 494.

69. **Lotteries**—Title to Prize.—A certificate, stating that article would be given without extra charge to holder of certificate bearing number corresponding to last three figures of bank clearings as published, etc., held to make right to such article depend on chance in nature of a lottery prohibited by Rev. Code 1915, § 3564. —State v. Gilbert, Del., 100 Atl. 410.

70. **Malicious Prosecution**—Probable Cause.— The fact that the committing magistrate before whom the plaintiff was charged with an offense required him to enter into bond for his appearance and that a grand jury returned a true bill against him established probable cause prima facie, but not conclusively.—Bowen v. W. A. Pollard & Co., N. C., 91 S. E. 711.

71. **Master and Servant**—Assumption of Risk. —Servant in trench does not assume risk of injuries from sewer pipes rolling in from sloping ground, where they had been placed without his knowledge; such injuries not being due to inherent danger in the work.—Cohn v. Walsh, Mo., 192 S. W. 1042.

72.——Automobile Owner. — If automobile owner directly or indirectly causes someone to drive his car for benefit of members of his family, such driver may become agent of owner. —Van Blaricom v. Dodgson, N. Y., 115 N. E. 443, 220, N. Y. 111.

73.——Labor Law.—Where the master has failed to comply with Labor Law, § 20, but has laid only a few scattered boards across the girders of the floor, and his servant engaged in removing them is killed by falling through a shaft which had never been covered at all, the rule relieving the master from liability where the removal itself creates the danger, does not apply, and the master is liable.—McNamara v. Eastman Kodak Co., N. Y., 115 N. E. 452.

74.——Notice of Injury.—Under Workmen's Compensation Act, failure to give notice of injury within specified period of 10 days is not a bar to recovery, if no prejudice results to employer, or if occasioned by mistake, incapacity, or other reasonable cause.—Smith v. Solvay Process Co., Kan., 163 Pac. 652.

75.——Res Ipsa Loquitur.—While the doctrine of res ipsa loquitur does not strictly apply to master and servant, yet where the evidence shows that the accident is necessarily the result of defective conditions and can be explained upon no other reasonable hypothesis, evidence indicating negligence authorizes submission to the jury.—Louisville & N. R. Co. v. Allen's Adm'r, Ky., 192 S. W. 863.

76.—Safe Implements.—One engaged in hauling steel rails on a two-wheeled truck cannot hold master liable for failure to equip truck with a rack, where such racks were available at all times.—Rhodes v. Chicago, R. I. & P. Ry. Co., Iowa, 161 N. W. 652.

77.——Workmen's Compensation Act.—Under Workmen's Compensation Act (Acts 1913, c. 10; Code 1913, c. 15P, §§ 657-711), term "dependent" means dependent for ordinary necessities of life for one of his class and social station, considering the financial position of recipient, and, if dependency exists at all, the decree is not important, and there is a right to participate in fund.—Poccardi v. State Compensation Com'r, W. Va., 91 S. E. 663.

78.——Workmen's Compensation Act.—Workmen's Compensation Act, providing that children and parents include that relation by "legal adoption," means adoption according to statute, and does not extend to child taken into family and treated as natural offspring under unperformed agreement to adopt.—Ellis v. Nevius Coal Co., Kan., 163 Pac. 654.

79. **Municipal Corporations**—Contract. — A municipal contractor is not entitled to recover compensation for alleged extras where price therefor was not agreed upon in writing before he performed work and claim was not presented to city within 14 days from time alleged items of expense were incurred.—Thomsen v. City of Kenosha, Wis., 161 N. W. 735.

80.——Defect in Street.—Actual knowledge by officers of municipality of facts of accident occurring by reason of defect in street does not excuse giving of notice required by Act March 21, 1913 (Laws 1913, p. 545).—Reid v. Kansas City, Mo., 192 S. W. 915.

81.——Nuisance.—A garbage dump, upon which large quantities of material were burned during a high wind, constituted a nuisance rendering the municipality liable, where the fire communicated itself to plaintiff's property.—City of Nashville v. Mason, Tenn., 192 S. W. 915.

82.——Rule of Highway.—Bicyclist, to avoid automobile, was not bound to turn to left, or to keep on directly to east, in preference to turning to right, unless first should have seemed to him, acting as an ordinarily prudent man under like circumstances, safer way to proceed.—Walterick v. Hamilton, Iowa, 161 N. W. 684.

83. **Names**—Descriptio Personae. — "Junior," being merely descriptive and no part of the name, need not be added to a son's name in a motion for a new trial and appeal papers, although the father also joined in such proceedings.—Peter Piper Tailoring Co. v. Dobbin. Mo., 192 S. W. 1044.

84. **Negligence**—Imputability.—In wife's action for injuries while riding in her automobile, bailed to husband, when struck by street car, husband's negligence, if any, held not imputable to her.—Virginia Ry. & Power Co. v. Gorsuch, Va., 91 S. E. 632.

85. **Pledges**—Bills and Notes.—Holder of notes, given without consideration and pledged as collateral security, could not collect from maker more than amount due it from payee.—Continental Credit Co. v. Ely, Conn., 100 Atl. 434.

86. **Principal and Agent**—Power of Attorney. —The purpose of a written power of attorney is not to define the authority of the agent, as between himself and his principal, but to evidence the agent's authority to third parties.—Keyes v. Metropolitan Trust Co. of City of New York, N. Y., 115 N. E. 455.

87. **Railroads**—Crossing.—Where automobile approaches crossing where train is standing and a collision results from the sudden starting of the engine, rule, that for driver of automobile to attempt to cross track without stopping where he cannot otherwise assure himself that no train is approaching, is negligent, does not apply.—De Hardt v. Atchison, T. & S. F. R. Co., Kan., 163 Pac. 650.

88.——Evidence.—The frequency of the use of interurban street railroad tracks on a highway does not affect the company's duty to persons thereon, but is material in determining whether the speed was reasonable.—Smith's Adm'r v. Louisville Ry. Co., Ky., 192 S. W. 875.

89.——License.—That railroad had placed signs along its right of way warning public against trespassing thereon did not absolve it from duty imposed by custom of public, which had ripened into license, to use pathway thereover, where such custom had continued after placing of signs.—Chicago, R. I. & P. Ry. Co. v. Austin, Okla., 163 Pac. 517.

90. **Sales**—Contract.—Where buyer of automobile accepted contract of sale executed by seller as final statement definitely fixing terms of agreement, he was bound by written contract, even if he did not sign it.—Glackin v. Bennett, Mass., 115 N. E. 490.

91.——Estoppel.—The buyer is estopped from refusing to accept delivery after the expiration of the time fixed by the written contract where the seller relied on a void oral agreement extending the time for delivery.—Hirsch Rolling Mill Co. v. Milwaukee & Fox River Valley Ry. Co., Wis., 161 N. W. 741.

92.——Rescission.—Where purchaser of horses under absolute warranty of soundness rescinded and sued to recover the price paid, such suit was an election of remedy, and the mere fact that collision was not result of negligence of note given as part of purchase price, in which suit the purchaser set up the breach of warranty, did not render the breach unavailable in his own action.—Hoyer v. Good, Iowa, 161 N. W. 691.

93. **Street Railroads**—Burden of Proof.—In action against street railroad for damage to plaintiff's automobile, struck by horse frightened when team it drew was struck by defendant's car, burden was on street railroad to explain that collision was not result of negligence of motorman.—J. Samuels & Bro. v. Rhode Island Co., R. I., 100 Atl. 402.

94.——Proximate Cause.—Where an automobile driver stalled on street car track is struck by approaching car which he sees 600 feet away, the failure to sound gong or bell on the car is, as a matter of law, not the proximate cause of his injury.—Peterson v. United Rys. Co. of St. Louis, Mo., 192 S. W. 938.

95. **Trusts**—Intention.—Where the creator of a trust stated his purpose to be to secure his wife and children a proper support, but prohibited the sale of the trust property without his consent, the purpose to provide support cannot be allowed to override the intention to restrict the sale.—Weakley v. Barrow, Tenn., 192 S. W. 927.

96.——Trustee.—A town which was made trustee of land donated for cemetery purposes held not entitled to convey the same to a corporation, though such conveyance would be for the benefit of the cemetery.—Adams v. Highland Cemetery Co., Mo., 192 S. W. 944.

97. **Waters and Water Courses**—Evidence.—That small quantity of water diverted from river into canals always escaped and thus returned to stream did not deprive parties taking water of right to quantity actually kept out of stream. —E. Clemens Horst Co. v. Tarr Mining Co., Cal., 163 Pac. 492.

98.——Riparian Owners. — Riparian proprietors are entitled, as against non-riparian proprietors, to the natural and usual flow of all waters in the stream, except as such right has been limited or divested by agreement or prescription.—Fresno Canal & Irrigation Co. v. People's Ditch Co., Cal., 163 Pac. 497.

99. **Wills**—Construction.—The rule that a legacy or devise will lapse when the legatee or devisee dies before the testator operates where the legatee or devisee is dead when the will is made.—In re Tamargo, N. Y., 115 N. E. 462.

100.——Residuary Legacy. — Under Comp. Laws 1914, § 3154, an insurance policy, made payable to the insured, "his executors, administrators and assigns," may be bequeathed as a part of a general residuary legacy of "all my other personal property."—Sloan v. Sloan, Fla., 74 So. 407.